

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO
09/936,746	03/05/2002	Ute Griesbach	CU-2652 RJS	8970
7590 10/29/2003			EXAMINER	
Richard J Streit			MAIER, LEIGH C	
Ladas & Parry Suite 1200 224 South Michigan Avenue Chicago, IL 60604			ART UNIT	PAPER NUMBER
			1623	
			DATE MAILED: 10/29/2003	

Please find below and/or attached an Office communication concerning this application or proceeding.

		Application N .	Applicant(s)			
		09/936,746	GRIESBACH ET AL.			
Office Action Summary		Examiner	Art Unit			
		Leigh C. Maier	1623			
The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply						
A SH THE I - Exter after - If the - If NC - Failu - Any r	ORTENED STATUTORY PERIOD FOR REPLY MAILING DATE OF THIS COMMUNICATION. nsions of time may be available under the provisions of 37 CFR 1.13 SIX (6) MONTHS from the mailing date of this communication. or period for reply specified above is less than thirty (30) days, a reply period for reply is specified above, the maximum statutory period we re to reply within the set or extended period for reply will, by statute, reply received by the Office later than three months after the mailing and patent term adjustment. See 37 CFR 1.704(b).	6(a). In no event, however, may a reply be within the statutory minimum of thirty (30) d ill apply and will expire SIX (6) MONTHS fro cause the application to become ABANDON	timely filed ays will be considered timely. m the mailing date of this communication. IED (35 U.S.C. § 133).			
1)	Responsive to communication(s) filed on 16 Ju	une 2003 .				
-,∟ 2a)⊠	<u> </u>	s action is non-final.	,			
3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213.						
Dispositi	on of Claims	•				
4)⊠ Claim(s) <u>11-28</u> is/are pending in the application.						
	4a) Of the above claim(s) <u>17-28</u> is/are withdrawn from consideration.					
5)	Claim(s) is/are allowed.					
6)⊠	6)⊠ Claim(s) <u>11-16</u> is/are rejected.					
	7) Claim(s) is/are objected to.					
· ·	Claim(s) are subject to restriction and/or	election requirement.				
Application Papers						
9) The specification is objected to by the Examiner.						
10) ☐ The drawing(s) filed on is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.						
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).						
11) The proposed drawing correction filed on is: a) approved b) disapproved by the Examiner. If approved, corrected drawings are required in reply to this Office action.						
12) The oath or declaration is objected to by the Examiner.						
Priority under 35 U.S.C. §§ 119 and 120						
13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).						
a) ☐ All b) ☐ Some * c) ☐ None of:						
1. Certified copies of the priority documents have been received.						
2. Certified copies of the priority documents have been received in Application No						
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).						
* See the attached detailed Office action for a list of the certified copies not received.						
14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).						
a) ☐ The translation of the foreign language provisional application has been received. 15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.						
Attachment(s)						
2) 🔲 Notic	e of References Cited (PTO-892) e of Draftsperson's Patent Drawing Review (PTO-948) nation Disclosure Statement(s) (PTO-1449) Paper No(s)	5) Notice of Informa	ry (PTO-413) Paper No(s) I Patent Application (PTO-152)			

DETAILED ACTION

Status of the Claims

Claims 1-10 have been canceled. Claims 11-28 have been added. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Newly submitted claims 17-28 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Original claims 1-9 were directed to a composition, and original claim 10 was a "use" claim that appeared to correspond to a method of preparing said compositions. However, the newly added claims 17-28 are directed toward two separate therapeutic methods of using the recited compositions.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 17-28 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 12-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. These claims depend from canceled claim 1, thus rendering the claims vague and indefinite.

Application/Control Number: 09/936,746

Art Unit: 1623

Claim Rejections - 35 USC § 103

Claims 11-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over ZULLI et al (US 6,342,4860) in view of WEITKEMPER et al (US 6,444,659) as applied to original claims 1 and 5-9 set forth in the previous Office action.

The invention is as set forth in the previous Office action. As noted above, claims 12-16 are made indefinite by being dependent on a canceled claim. However, these claims are being examined on the assumption that the "1" in the claims is a typographical error, and that "11" was intended.

Applicant's arguments filed June 16, 2003 have been fully considered but they are not persuasive.

Applicant contends that ZULLI discloses a glucan that is different than the claimed invention. The examiner disagrees with the characterization of the claim. Claim 11 recites generic "glucans" and generic "chitosans." Dependent claims recite various chitosan derivatives. Therefore, a fair reading of the claims would not preclude derivativatized glucans.

Applicant argues that WEITKEMPER only states that chitosans are "capable of interacting with oppositely charged surfaces and are therefore used in cosmetic hair care and body-care products." The examiner agrees. The fact that the reference teaches that chitosans have utility in the preparation of cosmetic preparations is sufficient to provide one of ordinary skill with motivation to combine chitosan with glucan, also having utility for preparing cosmetic compositions.

Application/Control Number: 09/936,746

Art Unit: 1623

Applicant further points to data in the disclosure that purport to demonstrate a synergistic effect for the combination of glucan and chitosan. These data were discussed in the previous Office action. The data were found to be insufficient evidence of synergy because the subjects were not matched at the start in order to have fair comparisons. However, even if, for the sake of argument, one were to accept Applicant's position that this type of comparison is adequate, it is noted that the results for comparative Example V1 (no chitosan) provide essentially the same results as Examples 1 and 2 (compositions of the invention).

Finally, Applicant comments on the LEUBA and TESLENKO references. The examiner reiterates that these references were used only to indicate the state of the art at the time of the invention and not used in the rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Application/Control Number: 09/936,746

Art Unit: 1623

Examiner's hours, phone & fax numbers

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leigh Maier whose telephone number is (703) 308-4525. The examiner can normally be reached on Tuesday, Wednesday, or Friday 7:00 to 3:30 (ET).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. James O. Wilson (703) 308-4624, may be contacted. The fax number for Group 1600, Art Unit 1623 is (703) 308-4556 or 305-3592.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 1600 receptionist whose telephone number is (703) 308-1235.

Visit the U.S. PTO's site on the World Wide Web at http://www.uspto.gov. This site contains lots of valuable information including the latest PTO fees, downloadable forms, basic search capabilities and much more.

Leigh C. Maier Patent Examiner October 21, 2003

JAMES O. WILSON

SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600